

Unassociated Document

<http://www.sec.gov/Archives/edgar/data/313807/0001193805100006...>

EX-99.(A)(2) 2 e606539_ex99-a2.htm

J.P. Morgan

Amendment No. 1 to Deposit
Agreement among BP plc, JPMorgan
Chase Bank, N.A. and all holders from
time to time of American depositary
receipts ("Receipts") issued thereunder

www.jpmorgan.com



Unassociated Document

<http://www.sec.gov/Archives/edgar/data/313807/0001193805100006...>

AMENDMENT NO. 1 TO DEPOSIT AGREEMENT

AMENDMENT NO. 1, dated as of March 8, 2010 (the "**Amendment**"), to the Amended and Restated Deposit Agreement dated as of August 1, 2007, among BP p.l.c., a corporation organized under the laws of England and Wales and its successors (the "**Company**"), JPMorgan Chase Bank, N.A., a national banking association organized under the laws of the United States, as depositary hereunder and any successor as depositary hereunder (the "**Depository**"), and all holders from time to time of American Depositary Receipts issued hereunder.

WITNESSETH:

WHEREAS, the Company and the Depository executed the Deposit Agreement for the purposes set forth therein; and

WHEREAS, pursuant to Section 6.01 of the Deposit Agreement, the Company and the Depository desire to amend the terms of the Deposit Agreement and Receipts.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Depository hereby agree to amend the Deposit Agreement as follows:

ARTICLE I
DEFINITIONS

SECTION 1.01. Definitions. Unless otherwise defined in this Amendment, all capitalized terms used, but not otherwise defined, herein shall have the meaning given to such terms in the Deposit Agreement.

Unassociated Document

<http://www.sec.gov/Archives/edgar/data/313807/0001193805100006...>

ARTICLE II
AMENDMENTS TO DEPOSIT AGREEMENT

SECTION 2.01. All references in the Deposit Agreement to the term "Deposit Agreement" shall, as of the date hereof, refer to the Deposit Agreement as amended by this Amendment.

SECTION 2.02. Section 1.1 of the Deposit Agreement is amended to include the following at the conclusion thereof.

The Depositary may issue fractional American Depositary Shares only in connection with any distribution made under Section 4.2 of the Deposit Agreement. Fractional American Depositary Shares may only be issued through the Direct Registration System.

SECTION 2.03. Section 1.10 of the Deposit Agreement is amended to read as follows:

The term "Direct Registration System" means the direct registration system maintained by the Depositary, pursuant to which the Depositary may record the ownership of uncertificated Receipts evidencing American Depositary Shares including fractional American Depositary Shares delivered pursuant to Section 4.2, which ownership shall be evidenced by periodic statements issued by the Depositary to the Holders entitled thereto.

SECTION 2.04. The second sentence of Section 2.1(a) of the Deposit Agreement is amended to read as follows:

Receipts in certificated form may be issued in denominations of any number of whole American Depositary Shares.

Unassociated Document

<http://www.sec.gov/Archives/edgar/data/313807/0001193805100006..>

SECTION 2.05. Section 2.5 of the Deposit Agreement is amended in its entirety to read as follows:

Upon receipt at the Depositary's Office or at such other offices as the Depositary may designate of a Holder's written order directing the Depositary to cause the whole number of Deposited Securities represented by the American Depositary Shares evidenced by a Receipt to be withdrawn and delivered to or upon the written order of the person or persons designated in such order, and upon the surrender, if applicable, of such Receipt (properly endorsed in blank or accompanied by proper instruments of transfer in blank, to the extent required by the Depositary), the Depositary shall direct the Custodian to deliver without unreasonable delay, subject to this Deposit Agreement and to the provisions of or governing Deposited Securities, to or upon the written order of the person or persons designated in such order, the Deposited Securities at the time represented by the American Depositary Shares evidenced by such Receipt, and the Custodian shall so deliver such whole number of Deposited Securities, at the office of the Custodian, except that the Depositary may, in its discretion, at the request, risk and expense of the Holder make delivery of such whole number of Deposited Securities without unreasonable delay to such person or persons at the Depositary's Office or at any other place specified by the Holder in such order. Directions shall be given by letter or, at the request, risk and expense of the Holder, by cable, telex, electronic or facsimile transmission. Delivery of whole number of Deposited Securities may be made by the delivery of certificates, to the extent such Deposited Securities may be represented by certificates, which, if required by law, shall be properly endorsed or accompanied by properly executed instruments of transfer, and if such certificates may be so registered, registered in the name of such Holder, or as ordered by such Holder or properly endorsed or accompanied by proper instruments of transfer. Delivery of Deposited Securities consisting of Shares shall be made by delivery of Shares in registered form only. Fractional Shares are not deliverable on the cancellation of American Depositary Shares. To the extent the cancellation of American Depositary Shares would give rise to the delivery of a fractional Share, the Depositary will promptly advise such Holder of such and shall either deliver to such Holder a new Receipt in book entry form on the Direct Registration System evidencing such fractional American Depositary Share or arrange to sell such fractional Share and deliver the net proceeds from such sale (after deduction of the costs and expenses of such sale) to the Holder entitled thereto. Sales of fractional Shares by the Depositary will occur on a periodic basis established by the Depositary on a basis of no less than one sale per month. Notwithstanding any provision of this Deposit Agreement or the Receipts, the Depositary may restrict withdrawals of Deposited Securities only for the reasons set forth in General Instruction I.A.(1) of Form F-6 under the Securities Act of 1933.

SECTION 2.06. Section 4.2 of the Deposit Agreement is amended in its entirety to read as follows:

Share Distributions; Elective Distributions. If any distribution upon any Deposited Securities consists of a dividend in, or free distribution of, Shares, the Depositary may or shall, if the Company shall so request, subject to this Deposit Agreement, distribute to the Holders on a record date fixed pursuant to Section 4.6, in proportion to the number of American Depositary Shares representing such Deposited Securities held by each of them respectively, additional Receipts for an aggregate number of American Depositary Shares representing the number of Shares received as such dividend or free distribution. If additional Receipts are not so distributed, each American Depositary Share shall thenceforth also represent its proportionate interest in the additional Shares so distributed upon such Deposited Securities.

Whenever the Company shall declare a dividend to be payable at the election of the holders of Shares in cash or in additional Shares (each an "Elective Distribution"), the Company and the Depositary agree to consult with each other to determine if it is reasonably practicable to extend such Elective Distribution to Holders and on the terms and procedures thereof. In connection with each Elective Distribution, the Company shall furnish an opinion of U.S. counsel to the Company, which counsel and opinion shall be reasonably acceptable to the Depositary, to the effect that the Company may make the Elective Distribution available to Holders and the Depositary may extend such Elective Distribution to Holders in each case without registration under the Securities Act of 1933 of the Shares issued pursuant to such Elective Distribution, or, if such opinion has been previously furnished, a letter from such counsel stating that the opinion previously provided may be relied upon by the Depositary as if such opinion were dated and delivered to the Depositary as of the date of such letter. If the Company and the Depositary have agreed that it is reasonably practicable to extend the Elective Distribution to Holders and on the terms and procedures thereof, the Depositary shall, if the Company shall request in writing, make such Elective Distribution available to Holders on the terms and following such procedures as agreed with the Company. If an Elective Distribution is not extended to Holders, the Depositary shall, to the extent permitted by law, distribute to the Holders, on the basis of the same determination as is made in the local market in respect of the Shares for which no election is made, either (x) cash upon the terms described in Section 4.1 or (y) additional American Depositary Shares representing such additional Shares upon the terms described in the first paragraph of this Section 4.2. If an Elective Distribution is extended to Holders, the Depositary shall establish a record date in the manner described in Section 4.6 hereof and inform Holders of the procedures necessary to permit them to participate in such Elective Distribution. Unless otherwise agreed in writing by the Company and the Depositary, to the extent a Holder shall make an election with respect to an Elective Distribution, such election shall remain in full force and effect until such time as a notice revoking such election is received from such Holder (in which case the Holder will be treated as having elected to receive the default consideration) or a further election is received from such Holder or the Depositary notifies such Holder that the election previously received from such Holder ceases to be valid for further Elective Distributions. The Company shall assist the Depositary in establishing such procedures to the extent reasonably necessary. Subject to Section 5.9 hereof, if a Holder elects to receive the proposed dividend (x) in cash, the dividend shall be distributed upon the terms described in Section 4.1, or (y) in American Depositary Shares, the dividend shall be distributed upon the terms described in the first paragraph of this Section 4.2.

Unassociated Document

<http://www.sec.gov/Archives/edgar/data/313807/0001193805100006...>

SECTION 2.07. The first paragraph of Section 4.7 of the Deposit Agreement is amended to include the following sentence at the conclusion thereof:

Notwithstanding anything contained herein this Section 4.7 to the contrary, Holders and their substitute proxy (other than the Depositary) shall only be permitted to attend, vote and speak at meetings at which holders of Deposited Securities are entitled to vote as the proxy of the Depositary or its nominee with respect to the whole number of Shares represented by the American Depositary Shares evidenced by Receipts held by such Holders on the record date set by the Depositary in accordance with Section 4.6 hereof.

ARTICLE III
AMENDMENTS TO THE FORM OF RECEIPT AND EXHIBIT B

SECTION 3.01. Paragraph 2 of the form of Receipt is amended in its entirety to read as follows:

Upon receipt at the Depositary's Office or at such other offices as the Depositary may designate of a Holder's written order directing the Depositary to cause the whole number of Deposited Securities represented by the American Depositary Shares evidenced by a Receipt to be withdrawn and delivered to or upon the written order of the person or persons designated in such order, and upon the surrender, if applicable, of such Receipt (properly endorsed in blank or accompanied by proper instruments of transfer in blank, to the extent required by the Depositary), the Depositary shall direct the Custodian to deliver without unreasonable delay, subject to the Deposit Agreement and to the provisions of or governing Deposited Securities, to or upon the written order of the person or persons designated in such order, the Deposited Securities at the time represented by the American Depositary Shares evidenced by such Receipt, and the Custodian shall so deliver such whole number of Deposited Securities, at the office of the Custodian, except that the Depositary may, in its discretion, at the request, risk and expense of the Holder make delivery of such whole number of Deposited Securities without unreasonable delay to such person or persons at the Depositary's Office or at any other place specified by the Holder in such order. Directions shall be given by letter or, at the request, risk and expense of the Holder, by cable, telex, electronic or facsimile transmission. Delivery of whole number of Deposited Securities may be made by the delivery of certificates, to the extent such Deposited Securities may be represented by certificates, which, if required by law, shall be properly endorsed or accompanied by properly executed instruments of transfer, and if such certificates may be so registered, registered in the name of such Holder, or as ordered by such Holder or properly endorsed or accompanied by proper instruments of transfer. Delivery of Deposited Securities consisting of Shares shall be made by delivery of Shares in registered form only. Fractional Shares are not deliverable on the cancellation of American Depositary Shares. To the extent the cancellation of American Depositary Shares would give rise to the delivery of a fractional Share, the Depositary will promptly advise such Holder of such and shall either deliver to such Holder a new Receipt in book entry form on the Direct Registration System evidencing such fractional American Depositary Share or arrange to sell such fractional Share and deliver the net proceeds from such sale (after deduction of the costs and expenses of such sale) to the Holder entitled thereto. Sales of fractional Shares by the Depositary will occur on a periodic basis established by the Depositary on a basis of no less than one sale per month. Notwithstanding any provision of this Deposit Agreement or the Receipts, the Depositary may restrict withdrawals of Deposited Securities only for the reasons set forth in General Instruction I.A.(1) of Form F-6 under the Securities Act of 1933.

Unassociated Document

<http://www.sec.gov/Archives/edgar/data/313807/0001193805100006...>

SECTION 3.02. The ninth, tenth and eleventh sentences of Paragraph 12 of the form of Receipt, and of all outstanding Receipts, are replaced with the following:

If any distribution upon any Deposited Securities consists of a dividend in, or free distribution of, Shares, the Depositary may or shall, if the Company shall so request, subject to the Deposit Agreement, distribute to the Holders on a record date fixed pursuant to Section 4.6, in proportion to the number of American Depositary Shares representing such Deposited Securities held by each of them respectively, additional Receipts for an aggregate number of American Depositary Shares representing the number of Shares received as such dividend or free distribution. If additional Receipts are not so distributed, each American Depositary Share shall thenceforth also represent its proportionate interest in the additional Shares so distributed upon such Deposited Securities.

Whenever the Company shall declare a dividend to be payable at the election of the holders of Shares in cash or in additional Shares (each an "Elective Distribution"), the Company and the Depositary agree to consult with each other to determine if it is reasonably practicable to extend such Elective Distribution to Holders and on the terms and procedures thereof. In connection with each Elective Distribution, the Company shall furnish an opinion of U.S. counsel to the Company, which counsel and opinion shall be reasonably acceptable to the Depositary, to the effect that the Company may make the Elective Distribution available to Holders and the Depositary may extend such Elective Distribution to Holders in each case without registration under the Securities Act of 1933 of the Shares issued pursuant to such Elective Distribution, or, if such opinion has been previously furnished, a letter from such counsel stating that the opinion previously provided may be relied upon by the Depositary as if such opinion were dated and delivered to the Depositary as of the date of such letter. If the Company and the Depositary have agreed that it is reasonably practicable to extend the Elective Distribution to Holders and on the terms and procedures thereof, the Depositary shall, if the Company shall request in writing, make such Elective Distribution available to Holders on the terms and following such procedures as agreed with the Company. If an Elective Distribution is not extended to Holders, the Depositary shall, to the extent permitted by law, distribute to the Holders, on the basis of the same determination as is made in the local market in respect of the Shares for which no election is made, either (x) cash upon the terms described above or (y) additional American Depositary Shares representing such additional Shares upon the terms described in the first paragraph of Section 4.2 of the Deposit Agreement. If an Elective Distribution is extended to Holders, the Depositary shall establish a record date in the manner described in Section 4.6 of the Deposit Agreement and inform Holders of the procedures necessary to permit them to participate in such Elective Distribution. Unless otherwise agreed in writing by the Company and the Depositary, to the extent a Holder shall make an election with respect to an Elective Distribution, such election shall remain in full force and effect until such time as a notice revoking such election is received from such Holder (in which case the Holder will be treated as having elected to receive the default consideration) or a further election is received from such Holder or the Depositary notifies such Holder that the election previously received from such Holder ceases to be valid for further Elective Distributions. The Company shall assist the Depositary in establishing such procedures to the extent reasonably necessary. Subject to Section 5.9 of the Deposit Agreement and paragraph 8 hereof, if a Holder elects to receive the proposed dividend (x) in cash, the dividend shall be distributed upon the terms described in Section 4.1 of the Deposit Agreement, or (y) in American Depositary Shares, the dividend shall be distributed upon the terms described in the first paragraph of this Section 4.2 of the Deposit Agreement.

Unassociated Document

<http://www.sec.gov/Archives/edgar/data/313807/0001193805100006...>

SECTION 3.03. The first paragraph of Paragraph 14 of the form of Receipt, and of all outstanding Receipts, is amended to include the following sentence at the conclusion thereof:

Notwithstanding anything contained herein this Section 4.7 to the contrary, Holders and their substitute proxy shall only be permitted to attend, vote and speak at meetings as the proxy of the Depositary or its nominee with respect to the whole number of Shares represented by such Holder's American Depositary Shares evidenced by Receipts held by such Holders at the close of business on the Voting Record Date in accordance with Section 4.6 of the Deposit Agreement.

SECTION 3.04. The form of Receipt, reflecting the amendments set forth in Sections 3.01 hereof is amended and restated to read as set forth as Exhibit A hereto.

SECTION 3.05. Exhibit B to the Deposit Agreement is amended to insert the following sentence at the conclusion thereof:

Issuance fees owing to the Depositary in connection with an Elective Distribution may be charged to Holders in such manner as the Depositary may reasonably determine, including, without limitation, by deducting the amount of such fees from each electing Holder's dividend entitlement by adding such issuance fee to the reference price used in calculating the ADS entitlement of each Elective Distribution.

Unassociated Document

<http://www.sec.gov/Archives/edgar/data/313807/0001193805100006...>

ARTICLE IV
MISCELLANEOUS

SECTION 4.01. Outstanding Receipts. Receipts issued prior or subsequent to the date hereof, which do not reflect the changes to the form of Receipt effected hereby, do not need to be called in for exchange and may remain outstanding until such time as the Holders thereof choose to surrender them for any reason under the Deposit Agreement. The Depositary is authorized and directed to take any and all actions deemed necessary to effect the foregoing.

SECTION 4.02. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one instrument.